HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

W.P. NOS. 16383 AND 20197 OF 2006

W.P.NO. 16383 OF 2006

BETWEEN:

M. Tarakeshwara Reddy and others

.... Petitioners

and

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Panchayat Raj Department,
Hyderabad & others

.... Respondents

Counsel for the petitioners : Shri S. Ramachander Rao,
Senior Advocate
assisted by
Shri K. R.
Prabhakar

Counsel for the respondents : Shri C.V. Mohan Reddy
Advocate General assisted
by
Government Pleader for
Panchayat Raj

W.P.NO. 20197 OF 2006

BETWEEN:

D. Sekhar and others

.... Petitioners

and

Government of Andhra Pradesh,
Rep. by its Chief Secretary,
Hyderabad & others

…. Respondents

Counsel for the petitioners : Shri S.S.N. Murthy
Counsel for respondent Nos. 1 to 4 and 6: Government Pleader for
Panchayat
Raj

Date: 28.09.2006

:: COMMON ORDER ::

Per G.S. SINGHVI, CJ

In these petitions, the petitioners have prayed for quashing

order dated 01.08.2006 passed by the Andhra Pradesh Administrative Tribunal in V.M.A.No.597 of 2006 in O.A. No. 2150 of 2006 and batch whereby interim orders passed in their favour were vacated. They have further prayed for issue of direction to the respondents to allow them to continue in service as Panchayat Secretaries till the disposal of the Original Applications.

For deciding the issue arising in the writ petitions, we may briefly notice the background facts.

In furtherance of the policy contained in G.O.Ms. Nos. 504, G.A. (Ser.A) Department dated 30.07.1980, 309 dated 04.07.1985, 214 dated 09.06.1988, a large number of wards of the employees of the Government of Andhra Pradesh who sought retirement on Medical Invalidation were appointed on different posts without any selection and without facing any competition with other eligible persons. To the misfortune of such appointees, the policies framed by the Government were struck down by a Full Bench of this Court in **Government of Andhra Pradesh, General Admn., Department, Hyderabad v. D. Gopaiah**[1]. The Full Bench held that the appointment of the wards of the Government servants seeking retirement on Medical Invalidation offended Article 16(1) of the Constitution.

In compliance of the judgment of the Full Bench, the State Government issued G.O.Ms.No.202 dated 27.04.2002 and cancelled the appointments of the dependents of the Government employees, who had retired on the ground of medical invalidation. However, due to the pressure exerted by the Joint Action Committee of employees, teachers and workers and

representations made by the legislators, the State Government issued G.O.Ms.No.44 dated 17.02.2003 for revival of the policy of appointment of wards of Government employees seeking retirement on Medical Invalidation. Paragraph 3 of that G.O. reads as under:

> " After careful consideration, Government have decided to accept the recommendation of the Cabinet Sub-Committee on Service Matters and order as follows;
>
> (i) Cases of dependants of the Government employees who retired on medical invalidation and whose cases could not be considered by 27.04.2002 be considered now for appointment on contract basis to the post of Executive Officer, Special Category – V, (Panchayat Secretary), under "Rule 9 of Andhra Pradesh State and Subordinate Service Rules 1996". Where the Panchayat Secretary (Category .V) posts are not available, the appointment on contract basis will be considered in equivalent posts of Panchayat Secretaries (Category V) in those districts as Additional Panchayat Secretary in Grade. I Gram Panchayats.
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> (ii) The appointments will be given only to the eligible dependents of Government employees who retired from service on Medical invalidation before issue of G.O.Ms.No.202, General Administration (Ser.A) Department, dated 27.04.2002 wherein orders were issued dispensing with the Scheme of Compassionate appointment in Medical Invalidation cases.
>
> (iii) The duration of contract appointment will be decided separately in consultation with Panchayat Raj and Rural Development Department.
>
> (iv) The appointing authority and other related matters shall be on the lines of A.P. Panchayat Subordinate Service (Special) Rules issued in

G.O.Ms.No.384, Panchayat Raj and Rural Development (Estt.IX) Department, dated 22.12.2001.

(v) The Panchayat Raj and Rural Development Department will issue related instructions separately including provision of budget to each Gram Panchayat."

The petitioners are the beneficiaries of the aforementioned G.O. They were appointed as Panchayat Secretaries on contract basis for one year because their parents had sought retirement on Medical Invalidation. In the orders of their appointment, it was clearly mentioned that they will not be treated as members of the cadre and will have no right to be continued in service. After about one year of their appointments, the State Government issued memo dated 16.06.2004 to all the Collectors (P.W.) to continue the Panchayat Secretaries, who were appointed under the scheme of Medical Invalidation, until further orders. This decision gave a new lease of life to contractual appointment of the petitioners. However, the benefit of appointment secured by the petitioners without facing any competition and without undergoing the process of selection did not last long because by taking suo motu cognizance of an apparently contemptuous decision taken by the Government to revive the policy of appointment of the dependants of the Government employees who secured retirement on Medical Invalidation, a Division Bench of this Court initiated proceedings under the Contempt of Courts Act, 1971. The same was registered as suo motu Contempt Case No.102 of 2006 in Writ Petition No.11128 of 2005. This forced the Government to issue G.O.Ms.No.246 dated 30.05.2006 whereby G.O.Ms.No.44 dated

17.02.2003 and G.O.Ms.No.100 G.A.(Ser.G) Department dated 03.03.2005 were withdrawn with immediate effect.

Faced with the prospects of termination of their services, the petitioners filed applications under Section 19 of the Administrative Tribunals Act, 1985. They also filed miscellaneous applications for directing the respondents to allow them to continue in service. By an order dated 13.04.2006 passed in O.A.No.2150 of 2006, the Tribunal directed the respondents to maintain status quo for a period of fourteen days. On the next date of hearing i.e. 27.04.2006, the interim order was extended until further orders. Similar interim orders were passed in other Original Applications.

On receipt of notice of the Original Applications, the respondents filed applications for vacating ad interim orders by contending that in view of the judgment of the Full Bench in **Government of Andhra Peradesh, General Admn., Department, Hyderabad v. D. Gopaiah** (supra), the appointment of the petitioners are liable to be treated as nullity and they are not entitled to continue as Panchayat Secretaries.

The Tribunal noticed the rival pleadings, considered the arguments of the learned counsel for the parties and concluded that the applicants (petitioners herein) are not entitled to continue on the posts of Panchayat Secretaries because G.O.Ms.No.44 dated 17.02.2003 and G.O.Ms.No.100 dated 03.03.2005 issued by the State Government were contrary to the judgment of the Full Bench in **D. Gopaiah's case** (supra). The Tribunal further held that the applicants who were appointed on contract basis without any selection did not acquire the right to hold the post and,

therefore, there was no justification to continue the ad interim orders. Accordingly, the vacate petitions filed by the respondents were allowed and interim order dated 13.04.2006 passed in Original Application No.2150 of 2006 was vacated and similar orders passed in other Original Applications were also vacated.

Shri S. Ramachander Rao and Shri S.S.N. Murthy, learned counsel for the petitioners vehemently argued that G.O.Ms.No.246 dated 30.05.2006 issued by the State Government seeking to withdraw the earlier G.Os. is per se illegal, arbitrary and unjustified and is liable to be struck down because the same has the effect of depriving the petitioners of their right to continue in service as Panchayat Secretaries. Learned counsel submitted that G.O.Ms.No. 246 dated 30.05.2006 has been issued by the State Government solely with a view to avoid the consequence of suo motu Contempt Case No.102 of 2006. Shri Ramachander Rao then argued that even though the petitioners were appointed as Panchayat Secretaries on contract basis by invoking Rule 9 of the Andhra Pradesh State and Subordinate Service Rules 1996, the termination of their service is liable to be invalidated because the competent authority did not give them one month's notice as provided in the conditions of appointment. Learned counsel took us through the judgment of Full Bench in **Government of Andhra Pradesh V. D. Gopaiah** (supra) and argued that the same cannot be treated as laying down correct law. In particular, he made reference to paragraph 28 of the judgment to show that the Full Bench did not go into the issue whether the scheme of compassionate appointment on Medical Invalidation comes within

the purview of protective discrimination or affirmative action and lamented that without going into the crucial issue the Court stuck down the policy framed by the Government for appointment of the wards of the employees who have retired on medical invalidation. Lastly, he argued that even if the Court comes to the conclusion that the contractual appointments accorded to the petitioners do not create a vested right in their favour, the termination of their services should be stayed till the appointment of regularly selected persons and, therefore, the same cannot be made basis for granting relief to the petitioners. Shri S.S.N. Murthy argued that the suo motu contempt proceedings initiated by the Division Bench of the High Court are liable to be ignored because the same are barred by time. In support of this argument, Shri Murthy relied on the judgment of the Supreme Court in **Pallav Sheth v. Custodian**[2].

Shri C.V. Mohan Reddy, learned Advocate General and Government Pleader for Panchayat Raj submitted that the policies framed by the Government for providing compassionate appointment to the wards of the employees who were retired or who sought retirement on Medical Invalidation was violative of Article 16(1) of the Constitution and the same cannot be relied for the purpose of justifying the appointments of the petitioners, which were per se unconstitutional. Learned Advocate General submitted that in the face of the judgment of the Full Bench in **D. Gopaiah's case** (supra), the State Government ought not to have issued G.O.Ms.No.44 dated 17.02.2003. He then argued that the petitioners who were given fixed term contractual appointment do

not have any legal or vested right to hold the post of Panchayat Secretaries and they cannot claim right to continue in service indefinitely simply because the Government had issued memo dated 16.06.2004 to the Collectors (P.W.) to continue them in service until further orders. Learned Advocate General submitted that the Government has taken a policy decision to fill up the posts of Panchayat Secretaries on contract basis by considering the candidature of all eligible persons and, therefore, the petitioners, who were appointed without any selection, cannot continue to occupy the posts for which advertisement has already been issued. Shri Reddy supported the order passed by the Tribunal and argued that in exercise of its power under Article 226 of the Constitution of India, the Court may not interfere with the discretion exercised by the Tribunal not to continue the interim orders.

We have given serious thought to the respective arguments. Since the Original Applications filed by the petitioners are pending adjudication before the Tribunal, it is neither desirable nor proper for us to express any conclusive opinion on the merits and demerits of the case set up by them or their right to be continued on the post of Panchayat Secretaries because that may prejudice the cause of either party. However, for the purpose of deciding whether the Tribunal committed any jurisdictional error by vacating ad interim orders passed in favour of the petitioners and whether they are entitled to continue on the post of Panchayat Secretaries indefinitely, it is necessary to advert to the judgment of the Full Bench in **D. Gopaiah's case** (supra),

G.O.Ms.No.202 dated 27.04.2002 and G.O.Ms.No.44 dated 17.02.2003 issued by the Government and also deal with the nature of the contractual appointment of the petitioners. In **D. Gopaiah's case** (supra), the Full Bench considered the question whether compassionate appointment on the ground of medical invalidation satisfies the requirement of Article 16 of the Constitution and answered the same in negative. This is evinced from the extract of para 37 of the judgment, which is re-produced below:

> " For the reasons aforementioned, we are of the opinion that appointment on compassionate ground on medical invalidation does not satisfy the requirement of Article 16 of the Constitution of India and any policy decision taken by the State is unconstitutional."

The argument of Shri S. Ramachander Rao that the judgment in **D. Gopaiah's case** (supra) should not be treated as laying down correct law because the Full Bench did not consider the issue of protective discrimination and affirmative action sounds attractive but lacks substance. A reading of the judgment as a whole leaves no manner of doubt that in the opinion of the Full Bench, the policy of compassionate appointment of the wards of the employees retired on medical invalidation plainly offends the doctrine of equality in the matter of employment enshrined under Article 16(1) of the Constitution.

We may add that compassionate appointment of the wards of the employees retired on the ground of Medical Invalidation cannot be equated with the compassionate appointment accorded to the employees dying in harness. In the first category of cases,

the employee who retires on Medical Invalidation gets pension. Though, such pension is not equivalent to pension admissible to an employee who retires on superannuation in the normal course, but the amount payable to the employee retiring on Medical Invalidation is by and large sufficient to sustain the family. In the second category of cases, the dependants of the employees are left without any source of sustenance on account of the sudden demise of the breadwinner. Therefore, the theory of protective discrimination and affirmative action, which was evolved to uphold the policies of appointment of the dependants of deceased employees, cannot be invoked to justify the appointments of the wards of the employees seeking retirement on the ground of Medical Invalidation.

We are further of the view that in the face of the law laid down by the Full Bench in **D. Gopaiah's case** (supra), the State Government was thoroughly ill-advised to issue G.O.Ms.No.44 dated 17.02.2003. A Government which claims to be wedded to the system established by rule of law cannot, in the name of appeasing various pressure groups, take decisions in complete disregard of the law laid down by the highest Court of the State. Therefore, we are prima facie convinced that G.O.Ms.No.44 dated 17.02.2003 is legally and constitutionally unsustainable and the petitioners, who were appointed pursuant to the policy contained in that G.O., cannot seek a declaration that they have acquired a right to hold the post or the right to continue in service indefinitely.

We are also prima facie convinced that on the basis of their contractual appointment for a period of one year, which was

extended till further orders vide memo dated 16.06.2004, the petitioners cannot claim the indefeasible right to remain in service. Indeed, it is not even the case of the petitioners that they had been appointed after adopting some process of selection and considering the competing claims of the other eligible persons. Therefore, their initial appointments were clearly violative of Article 16(1) of the Constitution. The Tribunal has kept this aspect in view while vacating the interim orders and we do not see any reason to defer with it.

We are further of the view that the petitioners have failed to make out a case for grant of temporary injunction for their continuance on the post of Panchayat Secretaries and the Tribunal did not commit any illegality by vacating ad interim order. The parameters for exercise of power by any judicial forum to grant interim relief are well-defined. In such matters, the concerned judicial fora is required to consider the following factors:

(1) Existence of a strong prima-facie case;

(2) Balance of convenience;

(3) Irreparable injury, if any suffered by the parties on account of grant or refusal of injunction; and

(4) Whether it would be in the public interest to pass an order of injunction.

All the above noted factors are required to be established by the petitioner/applicant before an order of injunction can be passed by the Court. In a given case the Court may feel satisfied about the existence of prima-facie case but still decline interim relief if the petitioner is not likely to suffer irreparable injury or the balance

of convenience is not in his favour or that grant of injunction would not be in public interest. Even if the first three factors are in favour of the petitioner, the Court may decline temporary injunction if it is found that the Court's order will not be in public interest. To put it differently, mere existence of strong prima-facie case and/or balance of convenience are not the only factors the existence of which would justify grant of an interim injunction. The Court must feel convinced about the existence of all the elements indicated above as a condition precedent to the grant of interim relief.

In **Vaish Degree College v. Lakshmi Narain**[3], the Supreme Court extensively considered the issue of grant of injunction for enforcing a contract of service. The facts of the case show that the respondent had challenged the termination of his service from the post of Principal of the college on the ground of violation of the provisions contained in Agra University Statute 14A and the Rules of natural justice. The trial Court dismissed the suit. On appeal, Additional Civil and Sessions Judge, Muzafarnagar decreed the suit and granted injunction in favour of the respondent. The second appeal preferred by the appellant was referred by a Single Judge of the Allahabad High Court to the Full Bench. The Full Bench affirmed the decree of the first Appellate Court with some modification. Their Lordship of the Supreme Court examined the question whether the contract of service entered into between the college and the respondent was enforceable. After considering several judicial precedence on the subject of enforceability of contractual service, the majority of the three Judges' Bench held as under:

> " The relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the Court according to sound legal principles and ex debito justitiae. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the Court must keep in mind the well settled principles of justice and fair play and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum."

In his concurring opinion, P.N. Bhagwati, J. referred to some English decisions and observed that the time had come to get rid of the old legal doctrines and adopt a more pragmatic approach in such maters. This is born out from the following observations on which strong reliance was placed by Shri Trivedi :

> "This rationale obviously can have application only where the contract of employment is a contract of personal service involving personal relations. It can have little relevance to conditions of employment in modern large-scale industry and enterprise or statutory bodies or public authorities where there is professional management of impersonal nature. It is difficult to regard the contract of employment in such cases as a contract of personal service save in exceptional cases. There is no reason why specific performance should be refused in cases of this kind where the contract of employment does not involve relationship of personal character. It must be noted that all these doctrines of contract of service as personal, non-assignable, unenforceable, and so on,

> grew up in an age when the contract of service was still frequently a "personal relation" between the owner of a small work shop or trade or business and his servant. The conditions have now vastly changed and these doctrines have to be adjusted and reformulated in order to suit needs of a changing society. We cannot doggedly hold fast to these doctrines which correspond to the social realities of an earlier generation far removed from ours. We must rid the law of these anachronistic doctrines and bring it in accord "with the felt necessities of the times".

P.N. Bhagwati, J. then referred to Fry's classic work on Specific Performance and observed:

> "It is therefore, necessary and I venture to suggest, quite possible, within the limits of the doctrine that a contract of personal service cannot be specifically enforced, to take the view that in case of employment under a statutory body or public authority, where there is ordinarily no element of personal relationship, the employee may refuse to accept the repudiation of the contract of employment by the statutory body or public authority and seek reinstatement on the basis that the repudiation is ineffective and the contract is continuing."

His Lordship then referred to the judgment in Mc Clelland v. Northern Ireland General Health Service Board (1957) 1 WLR 594 and observed:

> "It should thus be possible to hold that even if a statutory body or public authority terminates the service of an employee in breach of a contractual obligation, the employee could disregard the termination as ineffective and claim a declaration that his service is continuing. But this would be a

somewhat novel and unorthodox ground which has not been recognized by any decision of this Court so far and moreover I do not think that, on facts, this is a proper case in which it would really be applicable and hence I do not propose to finally pronounce upon it." (Emphasis added).

In **Kulchhinder Singh v. Hardayal Singh**[4], the Supreme Court again considered the question of enforceability of the contract of service and answered the same in the negative by making the following observations:

" The remedy of Article 226 is unavailable to enforce a contract qua contract. A mere contract agreeing to a quota of promotions cannot be exalted into a service rule or statutory duty. Private law may involve a State, a statutory body, or a public body in contractual or tortuous actions. But they cannot be siphoned off into the writ jurisdiction. Although Art. 226 is of wide amplitude to correct manifest injustice, but contractual obligations in the ordinary course, without even statutory complexion cannot be enforced by this short, though, wrong cut. Hence, a writ petition merely to enforce an agreement entered into between the employees and the co-operative Bank about giving certain percentage of promotions to existing employees is not maintainable."

In view of the above discussion, we hold that the petitioners have failed to make out a case for interference with the order dated 01.08.2006 passed by the Tribunal in V.M.A.No.597 of 2006 in O.A.No.2150 of 2006 and batch and the writ petitions are liable to be dismissed. Ordered accordingly.

However, keeping in view the fact that the State Government has already initiated the process of selection for

appointment of Panchayat Secretaries and this process is likely to take some time and sudden vacuum in the posts of Panchayat Secretaries may jeopardize the working of Panchayats, we deem it proper to issue the following directions:

(1) The petitioners shall be allowed to continue to work as Panchayat Secretaries at their respective places for a maximum period of three months by way of stopgap arrangement and within this time, the competent authority shall complete the process of selection and appoint the selected candidates.

(2) The petitioners may also apply for recruitment as Panchayat Secretaries in pursuance of the advertisement issued by the competent authority. If they were within the age limit at the time of contractual appointment on the post of Panchayat Secretaries, then they shall not be denied consideration on the ground that as on the date of application they have become overage. This would necessarily mean that if the petitioners had already crossed the upper age limit on the date of contractual appointment, then they shall not be entitled to be considered for selection against the advertised posts.

(3) If the petitioners are selected, then they may be appointed by the competent authority against the available vacant posts. For this purpose, the posts held by the petitioners shall also be treated as vacant.

(4) If the petitioners are not selected, then they shall have no right to continue in service and the Tribunal shall not pass

any interim order facilitating their continuance in service.

(5) The stopgap arrangement made by this Court shall not create any right whatsoever in favour of the petitioners.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

28.09.2006
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[1] 2001 (6) ALT 553 (F.B.)
[2] (2001) 7 SCC 549
[3] (1976) 2 SCC 58
[4] AIR 1976 SC 2216